HIGH COURT OF CHHATTISGARH AT BILASPUR

S.B. : HON'BLE JUSTICE SHRI SATISH K. AGNIHOTRI

WRIT PETITION No. 3663 of 2004

PETITIONER : Yogesh Kumar Gupta, aged about 20 years, S/o. late Shri Jahani Prasad Gupta, R/o. Vill. & Post Saragaon (via Bamnidih) Distt. Janjgir-Champa (Chhattisgarh)

VERSUS

RESPONDENTS : 1) State of Chhattisgarh, through: Secretary, General Administration Department, Mantralaya, DKS Bhawan P.O. and Distt. Raipur (C.G.)
2) District Education Officer, Janjgir, Distt. Janjgir-Champa (C.G.)
3) Block Educaiton Officer, Bamnidih, Distt. Janjgir-Champa (C.G.)
4) State of Madhya pradesh, through: Secretary, General Administration Deptt. Mantralaya Vallabh Bhawan, Bhopal, (M.P.)
5) Union of India, through: Secretary State Reorganisation, Parliament House, New Delhi.

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

Present: Mr. B.R.Ghosh, Advocate for the petitioner.
Miss Sunita Jain, Panel Lawyer for the State/respondents 1 to 3
Mr. S.K.Beriwal, Standing Counsel for the respondent no. 5.

ORDER

(Passed on 20th day of April, 2007)

1. By this petition, the petitioner seeks a writ of mandamus directing the respondents to consider the case of the petitioner for compassionate appointment. The petitioner further seeks for issuance of a writ of certiorari quashing the policy/circular dated 10.06.2003 (Annexure P/1) and 23.07.2003 (Annexure P/2).

2. The father of the petitioner, while working as Head Master in the Govt. Boys Primary School, Sargaon, died on 11.05.1995, in harness.

3. The petitioner has made an application on 14.08.2003 to the respondent no. 2, District Education Officer, Janjgir, District Janjgir-Champa It appears that the petitioner made application after having passed the Higher Secondary School Certificate Examination in March, 2002 and no specific date was stated either in the pleadings or in the arguments asto when he has attained majority.

4. It appears that vide order dated 10.06.2003, issued by the Under Secretary to the Government of Chhattisgarh, General Administration Department, certain new rules were framed for compassionate appointment (Annexure P/1) and which was subsequently amended on 23.07.2003 (Annexure P/2).

5. The petitioner has filed this writ petition stating that the circular/policy dated 10.06.2003 (Annexure P/1) and 23.07.2003 (Annexure P/2) is unreasonable, discriminatory and not in consonance with the spirit of the Constitution of India. The policy, in normal circumstances may not be interfered with by the High Court, except in the case of being unconstitutional, arbitrary and unreasonable. This policy dated 10.06.2003 came into consideration before this Court in several occasions and this Court has directed to consider the cases in accordance with law. Thus the prayer with regard to quashing of the policy is rejected.

6. It is well settled that compassionate appointment is not in accordance with the constitutional scheme of employment and is a back-door entry. The father of the petitioner died on 11.05.1995 and the petitioner has applied for compassionate appointment 14.08.2003. There is considerable delay of 8 years on the part of the petitioner for seeking compassionate appointment.

7. The Hon'ble Supreme Court in State of J&K and others Vs. Sajad Ahmed Mir, (2006) 5 SCC 766, in para 11 regarding delay in seeking compassionate appointment held as under:

> "Once it is proved that inspite of the death of the breadwinner, the family survived and substantial period is over, there is no necessity to say "good-bye" to the normal rule of appointment and to show favour to one at the cost of the interest of several others ignoring the mandate of Article 14 of the Constitution."

8. Moreover, it is now well settled that appointment on compassionate ground cannot be claimed as a matter of right.

9. It is thus clear from the decision cited above that the petitioner cannot claim compassionate appointment by virtue of a right of inheritance. Even otherwise, the considerable delay of 8 years on the part of the petitioner for seeking compassionate appointment is unsustainable as being unexplained.

10. For the reasons stated hereinabove, this petition deserves to be and is accordingly dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Amit